



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
100 ALABAMA STREET, S.W.
ATLANTA, GEORGIA 30303-3104

ENVIRONMENTAL ACCOUNTABILITY DIVISION
SENDER'S FAX NUMBER (404) 562-9486

TELECOPY TRANSMITTAL SHEET

DATE: 11/9/99

NUMBER OF PAGES 6

TO: Russell Randle

PHONE: _____

OFFICE: Patton Boggs LLP

FAX #: 202-457-6315

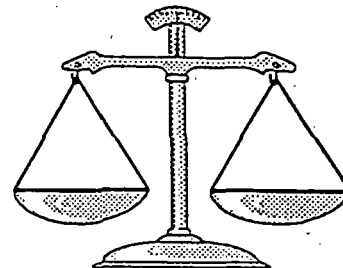
FROM: Dave Clay

PHONE: _____

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

November 9, 1999

BY FACSIMILE AND US MAIL

Russell V. Randle
Patton Boggs LLP
2550 M Street, NW
Washington, D.C. 20037

RE: Collierville Superfund Site; Tolling Agreement

Dear Mr. Randle:

I am in receipt of your letter dated November 8, 1999. EPA appreciates Carrier's desire to sign an appropriate tolling agreement in order to allow the parties adequate time to resolve outstanding cost issues.

It is EPA's position that the parties are signing a tolling agreement for two reasons. First, we are allowing adequate time to satisfy Carrier's request for EPA to provide Carrier with certified documentation of costs incurred in performing oversight activities of work performed under the Unilateral Administrative Order ("UAO"). Although the outstanding past costs under the UAO are quite small, they are still costs alleged by EPA to be owed to the United States. Second, we are allowing adequate time to discuss and negotiate a short cost recovery agreement whereby Carrier will agree to reimburse the United States for future costs incurred for oversight of work remaining to be performed under the UAO.

As previously stated, it is EPA's position that the outstanding costs allegedly owed under the Administrative Order on Consent ("AOC") are not affected by any statute of limitations. However, in providing Carrier with documentation of costs under the UAO, certified documentation will also be provided for costs under the AOC. The tolling agreement will toll interest, as you requested, during the period of the agreement.

EPA accepts your proposed changes in the introduction, paragraph one, and paragraph two.

Paragraph three, although verbose, EPA must retain and not "streamline". It makes our agreement very clear. As I indicated to you by telephone, EPA's draft contains model language that has been agreed to between the United States Department of Justice and EPA. I recognize that there may be better ways to state what is in this paragraph but we have agreed to retain the model language when it says the same thing. EPA does agree to your request on interest, as previously stated, and has included this language in paragraph three.

EPA accepts your proposed changes in paragraph four.

Paragraph five is unchanged.

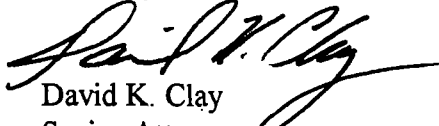
As for paragraph six, the purpose of a tolling agreement is to facilitate discussions between the parties for response costs without recourse to litigation. In the event that discussions are not fruitful and a standstill occurs, a tolling agreement allows EPA time to refer the matter to the Department of Justice and in turn time for the United States to adequately prepare and file a complaint in the proper court. Thus the reason why the tolling period continues once the United States terminates negotiations. Your request of a reciprocal termination reservation is not possible. I have conferred with the Department of Justice and this is not acceptable. This benefit is for the United States since we are the party with the alleged claim. Carrier does have benefits under the tolling agreement. An immediate complaint is not being filed thus allowing time to fulfill the purpose as described. Carrier is also gaining the benefit of an interest waiver during the period of the agreement. EPA agrees that it will provide Carrier with two weeks notice should it become necessary to terminate negotiations. This language is included.

Paragraphs seven and eight are unchanged. I am unable to insert an effective date until the agreement is signed by EPA.

Please have Carrier sign the agreement and return the original to me. Once it has been signed by EPA, I will notify you by telephone and forward an executed copy to you.

Please express to your client that EPA is committed to working with Carrier to resolve these cost issues during the tolling period, as expeditiously as possible, and that we continue to appreciate their cooperation as work continues at the Site.

Sincerely,


David K. Clay
Senior Attorney

**TOLLING AGREEMENT FOR THE CARRIER AIR CONDITIONING
SUPERFUND SITE**

This Tolling Agreement ("Agreement") is entered into between the Environmental Protection Agency ("EPA") on behalf of the United States of America ("United States"), and Carrier Corporation, a Delaware Corporation with an operation located at Collierville, Tennessee ("Carrier"). The undersigned representatives of the parties certify that s/he is fully authorized to enter into terms and conditions of the Agreement and to execute and bind the United States or Carrier, as the case may be, to this document. The purpose of this Agreement is to facilitate discussions between EPA and Carrier for response costs without recourse to litigation, if possible.

The Parties hereby agree as follows:

1. The United States contends that it presently has a potential cause of action against Carrier pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. § 9607. The United States also contends that it will have future costs. These potential causes of action relate to reimbursement of costs with respect to the Carrier Air Conditioning Superfund Site located in Collierville, Tennessee ("Site"), and not to any other Site or matter.
2. EPA and Carrier enter into this Agreement in order to pursue good faith negotiations to attempt to resolve the United States' causes of action referred to in Paragraph One without litigation. It is acknowledged to be in the interest of the United States and Carrier to attempt to resolve any disagreements without litigation, if possible.
3. The United States and Carrier agree that the period of time commencing on November 30, 1999, and ending March 31, 2000, inclusive, shall not be included in computing the time limited by any statute of limitations for filing the causes of action generally described in Paragraph One of this Agreement, if any statute of limitations is applicable for such causes of action. Carrier also agrees that the period of time commencing on November 30, 1999, and ending on March 31, 2000, inclusive, will not be asserted in whole or in part, as a basis for a defense of laches or similar defense.

concerning the timeliness of commencing a civil action for recovery of the response costs incurred or to be incurred by the United States in connection with the Site. Carrier further agrees not to assert, plead, or raise against the United States in any fashion, whether by answer, motion, or otherwise, any defense or avoidance based on the running of any statute of limitations during the period of time commencing on November 30, 1999, and ending March 31, 2000, inclusive, and that any statute of limitations shall be tolled during and for the period of time commencing November 30, 1999, and ending March 31, 2000. This period shall not be included for the purposes of computing interest on any obligation which is agreed to or found to be due.

4. This Agreement does not constitute an admission of any fact or liability on the part of Carrier, nor does it affect the assertion of any defense to liability except as specifically provided in Paragraph Three of this Agreement. Carrier specifically reserves all its rights and defenses against any claims to be asserted by the United States, except as expressly tolled by this agreement, including the argument that the statute of limitations has already expired.
5. This Agreement does not constitute any admission or acknowledgment on the part of the United States regarding any fact relating to the statute of limitations under CERCLA, or any other applicable statute or laws, nor does it constitute an agreement by the United States that any defense to liability as to costs under CERCLA is available to the undersigned. The United States reserves the right to assert that no statute of limitations applies.
6. Upon two weeks written notice, the United States may terminate negotiations and commence suit at any time thereafter without affecting the waiver in Paragraph Three.
7. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by any of the parties or agent of the parties that is not contained in this written contract shall be valid or binding, and this contract may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed herein.

8. This Agreement shall be effective the ____ day of
_____, 1999.

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

BY: _____ Date _____
Franklin E. Hill
Chief,
Program Services Branch
Waste Management Division
U.S. EPA Region 4

Carrier Air Conditioning Superfund Site Tolling Agreement
Signature Page

_____ consents to the terms and conditions
of the Agreement on the ____ day of _____, 1999.

BY: _____
(Name of Signing Party)

FOR: Carrier Corporation

(Address) _____

*** TRANSMISSION REPORT ***

NOV-09-99 12:37 ID:404 562 9486

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